No. 85-993

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

PAULA A. HOBBIE, *Appellant*,

v.

UNEMPLOYMENT APPEALS COMMISSION AND LAWTON AND COMPANY, *Appellees*.

On Appeal From The District Court Of Appeals Of The State Of Florida Fifth District

BRIEF FOR APPELLANT

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QUESTIONS PRESENTED FOR REVIEW

1. Does an employee's refusal for religious reasons to work on her Sabbath constitute "misconduct connected with work" so as to warrant denial by the state of unemployment insurance benefits when she is discharged?

2. Does Florida Statutes § 443.101 as construed and applied so as to deny unemployment insurance benefits to a person who refuses to work certain scheduled hours because of sincerely held religious convictions adopted after employment began violate the Free Exercise Clause of the First Amendment?

LIST OF ALL PARTIES

All of the parties appearing before the Supreme Court in this matter are listed in the caption of the Brief for Appellant.

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BRIEF FOR APPELLANT

OPINIONS BELOW

Hobbie was fired when she refused to work on her Sabbath. She applied for unemployment insurance benefits but was denied. On appeal her claim was heard by an Appeals Referee whose Decision of July 20, 1984, affirmed the denial of such benefits. (A copy of that Decision is set out in the Joint Appendix at p. 1; hereinafter cited as JA). The referee's determination was affirmed by the Florida Unemployment Appeals Commission on September 11, 1984, with a single sentence: "Upon review pursuant to § 443.151(4)(c), Florida Statutes, it is found that the decision of the appeals referee is in accord with the essential requirements of law and is, therefore, affirmed." (JA at 5). Hobbie appealed the Commission's Order to the

District Court of Appeal of the State of Florida, Fifth District. On September 10, 1985, that court issued its decision: "*Per Curiam*. Affirmed." (JA at 6). A "Notice of Appeal" to the U.S. Supreme Court was filed with the District Court of Appeal within 90 days of the entry of the final judgment (JA at 7).

GROUNDS ON WHICH JURISDICTION IS INVOKED

This is an appeal from a final *per curiam* judgment of the District Court of Appeal of the State of Florida Fifth District. Under Florida law a *per curiam* decision cannot be appealed to the Florida Supreme Court. See Rule 9.030(a)(2)(A)(ii), Florida Rules of Appellate Procedure. *See also, In Re Florida Rules of Appellate Procedure*, 391 So.2d 203 (Fla.1980).

The judgment confirmed a construction and application of Florida law so as to deny Hobbie rights secured by the Free Exercise Clause of the First Amendment. The state Unemployment Appeals Commission determined that her refusal to work on Sabbath constituted "misconduct connected with work" under Fla. Stat. Ann. § 443.101(1)-(a)2 (1982), and denied her unemployment insurance benefits. Hobbie has challenged this interpretation of the Florida statute argueing its repugnance to both the federal Constitution and the decisions of the Supreme Court.

This Court's jurisdiction on appeal is invoked by virtue of 28 U.S.C.A. § 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provisions involved are found within the Religion Clauses of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . .
>
> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The pertinent portion of the applicable federal statute pertaining to the Court's jurisdiction is as follows:

> 28 U.S.C.A. § 1257: Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The pertinent portions of the Florida statutes are as follows:

> § 443.021, Florida Statutes. Declaration of public policy.
>
> As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement

of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with a nationwide system of employment services, by devising appropriate methods for reducing the volume of unemployment and by the systematic accumulation of funds during the periods of employment from which benefits may be paid for periods of unemployment thus maintaining purchasing power and limiting the serious social consequences of unemployment. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state, for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, subject, however, to the specific provisions of this chapter.

§ 443.101(1)(a)(2) Florida Statutes: Disqualification for being discharged for misconduct connected with his work shall continue for the full period of unemployment next ensuing after having been discharged and until such individual has become reemployed and has earned wages not less than 17 times his weekly benefit amount and for not more than 52 weeks which immediately follow such week, as determined by the division in each case according to the circumstances in each case or the seriousness of the misconduct, pursuant to rules of the division enacted for determinations of disqualification for benefits for misconduct.

§ 443.036(24) Florida Statutes: "Misconduct" includes, but is not limited to, the follow-

ing which shall not be construed in *pari materia* with each other:

(a) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee; or

(b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent or evil design, or to allow an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

STATEMENT OF THE CASE

Lawton and Co., a Florida jeweler, hired Paula Hobbie in October of 1981. At the time of her discharge on June 1, 1984, she had been promoted to assistant manager.

When first hired, Hobbie was not a member of the Seventh-day Adventist Church. After a religious conversion she became a baptized member of the Church on May 19, 1984. In so doing, she adopted the belief that the seventh-day Sabbath, observed from sundown Friday to sundown Saturday, is a holy day to be devoted to spiritual activities. It is not disputed that her conversion was entirely *bona fide* and that her membership in the Church and adherence to its doctrines and beliefs are likewise *bona fide*.

Hobbie informed her immediate superior, Parks L. Heaton, of her new beliefs, indicating that she would be unable to work on the Sabbath. Acting on his own initiative, Heaton worked out an arrangement with Hobbie where she agreed to work for him on Sundays and he agreed to work for her whenever she was scheduled to

work on Friday nights after sunset or before sunset on Saturdays. This accommodation, made without the prior approval of Lawton and Company's upper management, proved successful for approximately two months (Tr. at 51, 57). Upon discovery, upper management immediately discontinued this arrangement and gave Hobbie an ultimatum either to work on her Sabbaths as scheduled, or quit (Tr. at 68). No attempt was ever made by upper management to accommodate Hobbie's new beliefs, despite her immediate supervisor's statement that their arrangement was working without any problem (Tr. at 59, 78, 79).

On June 1, 1984, Lawton and Company fired Hobbie, who then filed a claim with the Florida Department of Labor and Employment Security seeking unemployment insurance benefits. Lawton and Company contested the payment of such benefits claiming she had been "discharged for misconduct connected with work on June 1, 1984." The employer stated that she had been discharged because she "was not able to work hours needed as she had done for the past 2 years. Due to claimant's recent change in beliefs the claimant made herself unavailable for work on Friday and Saturday. The claimant was given the chance to work her normal hours as she had done for the previous 2-2½ years or terminate her employment" (Tr. at 4).

The Florida Department of Labor and Employment Security Bureau of Unemployment Compensation denied Hobbie's application for benefits. She appealed this determination to the Unemployment Compensation Appeals Board. During the administrative hearing, the sincerity of Hobbie's religious beliefs was never questioned; neither did the employer offer any evidence suggesting that it had suffered injury, damage or other hardship as a result of

Hobbie's request for a religious accommodation. The testimony did not reflect any attempt by Lawton and Company, other than what Hobbie and her immediate supervisor had worked out among themselves, to effect an accommodation of her beliefs. Nor did the State introduce any evidence indicating that payment to Hobbie of unemployment insurance benefits would create a hardship. Nevertheless, the Appeals Referee denied Hobbie benefits, concluding that she had been discharged for "misconduct connected with work."

This decision was appealed to the Florida District Court of Appeals, Fifth District, which issued a *per curiam* affirmance on September 10, 1985. Since under Florida law, a *per curiam* decision cannot be appealed to a higher state court, Hobbie appealed directly to the United States Supreme Court.

SUMMARY OF ARGUMENT

A statute which is construed to disqualify from unemployment insurance benefits one who adopts a new Sabbatarian faith deprives her of the free exercise of her religion. Religious conversion does not constitute "misconduct" for purposes of qualifying for unemployment benefits, because conversion is a fundamental right protected by the Constitution. The State of Florida may constitutionally infringe this right only for compelling reasons, and only if there is no less restrictive alternative. Here, the State of Florida has no reason at all to deny Hobbie her rights, much less has the State shown any compelling interest.

The Court has held that a State may not condition the receipt of public benefits on the relinquishing of one's constitutional rights. However, Florida has put Hobbie to the cruel choice between fidelity to her conscience and

receiving public benefits. Such state induced economic coercion has been held unconstitutional in *Sherbert* v. *Verner* and *Thomas* v. *Review Board*. To disqualify only those who adopt a religion in the first instance is to convey a message of government hostility towards religious conversion. Such hostility violates the Establishment Clause, and to the extent that it discriminates against the members of religions that proselytize, it is a denial of equal protection of the law as well.

ARGUMENT

I. THE SUPREME COURT HAS JURISDICTION UNDER 28 U.S.C.A. § 1257(2).

Paula Hobbie has been deemed ineligible for unemployment benefits under Fla. Stat. Ann. § 443.101(1)(a)(2). Her religious conversion and subsequent inability to work on Sabbath were found by the State of Florida to constitute "misconduct" under the statute. Such an interpretation deprives her of the constitutional right to the free exercise of religion.

Under federal law, U.S.C.A. § 1257(2), the final judgment rendered by the highest court of a state in which the validity of a state statute is challenged may be appealed to the Supreme Court. Hobbie challenges the validity of Fla. Stat. Ann. § 443.101(1)(a)(2) as construed and applied to the facts of this case.

The pertinent language of 28 U.S.C.A. § 1257(2) requires that the validity of the state statute be "drawn in question" during the state court proceeding. All parties satisfied this requirement in the briefs presented to the State Court of Appeals. In *Supreme Court Practice*, the requirements for raising a federal question are stated:

> In framing the federal question for presentation to the state court, the litigant is not bound to follow any particular form of words or phrases. It is essential only that he bring the federal claim and the grounds therefor to the state court's attention with fair precision. And "if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." *New York ex. rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 67.

Stern & Gressman, *Supreme Court Practice* 210 (5th Ed. 1978).

The central issue argued by both sides in the Florida Court of Appeals was whether the statute as applied deprived Hobbie of her constitutional rights. As stated in Hobbie's brief:

> The Appeals Referee erred in holding as a matter of law under Florida Statute 443.101(1) that appellant's refusal to work scheduled hours on friday evenings and saturdays as the result of religious conviction constituted misconduct connected with her work in that said ruling constitutes the denial of unemployment compensation benefits to appellant in deprivation of her guaranteed right to the free exercise of her religion under the First Amendment to the United States Constitution.

Record at 4. Hobbie relied on *Sherbert* v. *Verner*, 374 U.S. 398 (1963); and *Thomas* v. *Review Board*, 450 U.S. 707 (1981) as controlling precedent requiring an interpretation of the statute that would exclude religious conversion from being considered misconduct under the applicable law.

The Second Argument of the Answer Brief of Florida's Unemployment Appeals Commission also specifically ad-

dressed the Constitutional issue. It stated, "the denial of unemployment compensation to the claimant did not constitute state action that was a substantial infringement of the claimant's First Amendment right to the free exercise of her religion." This argument, too, relied on *Thomas* and *Sherbert*, while attempting to factually distinguish these cases from Hobbie's situation.

There is no question that Hobbie properly raised a constitutional challenge to the application of the Florida statute to her conversion. So long as the state court decision upholds the validity of a state statute against a constitutional challenge, it is not necessary for the court to issue an opinion specifically addressed to that issue. It is the effect, not the reasoning, that is significant. As Stern & Gressman comment:

> In the setting of § 1257(2), *an appeal will lie even though the state court is not explicit* in overruling a timely challenge on federal grounds to the validity of the state statute, although the challenge itself must be explicit. *As long as the statute is sustained, the court has necessarily rejected such an objection. Its silence in this respect is immaterial and cannot destroy the right to appeal under § 1257(2)*—a result in sharp contrast with the significance under § 1257(1) of silence relative to a claimed invalidity of a federal statute or treaty. Thus an erroneous failure to pass on the federal constitutional objections to the state statute is treated as equivalent to a finding of validity within the meaning of § 1257(2), so that an appeal will lie. *Lawrence* v. *State Tax Commission*, 286 U.S. 276, 282-283.

Stern & Gressman, *Supreme Court Practice* 163 (5th Ed. 1978) (emphasis added).

The effect of the Florida court's *per curiam* decision is to uphold the statute, as applied, in the face of a constitutional challenge. The absence of any stated grounds for the decision cannot deprive Hobbie of her right to an appeal. As this Court has stated:

> But the Constitution, which guarantees rights and immunities to the citizen, likewise insures to him the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked.

Lawrence v. *State Tax Commission*, 286 U.S. 282, 283 (1932).

This Court has held in similar cases that where a final decision of a state court has sustained the validity of a state statute in the face of a federal constitutional challenge, an appeal to the United States Supreme Court lies as a matter of right. *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, *reh'g denied*, 421 U.S. 971 (1975). Furthermore, where the right to appeal exists, the Supreme Court lacks discretion to refuse adjudication of the case on its merits as it would if the case is brought by writ of certiorari. *Hicks* v. *Miranda*, 422 U.S. 332 (1975).

Florida would mistakenly rely on the fact that the *per curiam* affirmance is without precedential value. The issue here, however, is whether Hobbie is entitled to unemployment benefits. The Court of Appeals decision effectively resolved that question in the negative. The precedential value of the decision is irrelevant to the Supreme Court's jurisdiction in this case, since a present controversy exists and Hobbie's constitutional rights have been denied. Moreover, a holding by this Court that jurisdiction is lacking would show the states how constitutional rights can be denied by administrative hearing officers, whose rulings would then be affirmed by a non-

reviewable *per curiam* decision by a state appellate court. This procedural technicality would effectively insulate such rulings from federal review.

The Florida Court of Appeals' *per curiam* decision interpreted the unemployment compensation statute to find that Hobbie's religious conversion and resulting conflict with her employment constituted misconduct. As a consequence, she was disqualified from receiving unemployment benefits. The constitutional challenge to her denial of such benefits was raised in the Administrative Hearing (Hearing Transcript at 108, 109) and in the Florida Court of Appeal. Under 28 U.S.C.A. § 1257(2), jurisdiction is properly vested in the U.S. Supreme Court.

II. RELIGIOUS CONVERSION IS PROTECTED BY THE FIRST AMENDMENT AND DOES NOT CONSTITUTE MISCONDUCT OR FAULT FOR PURPOSES OF DENYING UNEMPLOYMENT COMPENSATION BENEFITS.

A. This Case Is Controlled By *Thomas* v. *Review Board* And *Sherbert* v. *Verner*.

Unemployment benefits are available in the State of Florida to persons who become "unemployed through no fault of their own." Fla. Stat. Ann. § 443.021. Persons discharged due to "misconduct" are not entitled to benefits. Fla. Stat. Ann. § 443.131(3)(a). Every other state in the nation has comparable statutory language.[1]

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[1] Ala. Code § 25-4-78 (1975); Alaska Stat. § 23.20.379 (1962); Ariz. Rev. Stat. Ann. § 23-775 (1956); Ark. Stat. Ann. § 81-1106 (1974); Cal. Unemp. Ins. Code § 1256 (West 1953); Colo. Rev. Stat. § 8-73-108 (1973); Conn. Gen. Stat. Ann. § 31-236 (West 1958); Del. Code Ann. tit. 19 § 3315 (1974); D.C. Code Ann. § 46-310 (1973); Ga. Code Ann. § 34-8-158 (1982); Hawaii Rev. Stat. § 383-30 (1976); Idaho Code § 72-1366 (1947); Ill. Ann. Stat. ch. 48 § 432 (Smith-Hurd 1935); Ind. Code Ann. § 22-4-15-1 (Burns 1971); Iowa Code Ann. § 96.5 (West 1939); Kan. Stat. Ann. § 44.706 (1964); Ky. Rev. Stat. § 341.370 (1970); La. Rev. Stat. Ann. § 23:1601 (West 1950); Me. Rev. Stat. Ann. tit. 26, 1193 (1964); Md. Ann. Code art. 95A, § 6 (1957); Mass. Gen. Laws Ann. ch. 151A, § 25 (West 1958); Mich. Comp. Laws Ann. § 421.29 (West 1948); Minn. Stat. Ann. § 268.09 (West 1946); Miss. Code Ann. § 71-5-513 (1972); Mo. Ann. Stat. § 288.050 (Vernon 1949); Mont. Code Ann. § 87-106 (1985); Neb. Rev. Stat. § 48-628 (1943); Nev. Rev. Stat. § 612.385, 612.380 (1957); N.H. Rev. Stat. Ann. § 282:4 (1955); N.J. Stat. Ann. § 43:21-5 (West 1939); N.M. Stat. Ann. § 51-1-7 (1978); N.Y. Lab. Law § 593 (McKinney 1939); N.C. Gen. Stat. § 96-14 (1965); N.D. Cent. Code § 52-06-02 (1959); Ohio Rev. Code Ann. § 4141.29 (Page 1953); 40 Okl. Stat. Ann. § 2-404 (West 1971); Or. Rev. Stat. § 657.176 (1953); Pa. Stat. Ann. tit. 43, § 802 (Purdon 1970); R.I. Gen. Law § 28-44-18 (1956); S.C. Code Ann. § 41-35-120 (Law Co-op 1976); S.D. Comp. Laws Ann. § 61-6-13, 61-6-14 (1967); Tenn. Code Ann. § 50-7-303 (1956); Tex. Rev. Civ. Stat. Ann. art. 5221b-3 (Vernon 1958); Utah Code Ann. § 35-4-5 (1953); Vt. Stat. Ann. tit. 21, § 1344 (1958); Va. Code § 60.1-58 (1950); Wash. Rev. Code Ann. § 50.20.060 (1961); W. Va. Code § 21A-6-3 (1966); Wis. Stat. Ann. § 108.04 (West 1957); Wyo. Stat. § 27-3-311 (1977).

If religious conversion is found to constitute "misconduct" in the instant case, states across the country will discourage persons, and in some cases economically prohibit them, from converting to religions whose practices may come into conflict with employment opportunities. Not only will such persons be faced with a "cruel choice of surrendering their religion or their job," they will be forced by the state to choose between their religion and the receipt of unemployment insurance benefits as well. *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 87 (1977) (Marshall, J. dissenting).

Such compulsion of the conscience by state sanctioned economic coercion flies in the face of stated Free Exercise values, and is prohibited by the Court's ruling in *Thomas* v. *Review Board*, 450 U.S. 707 (1981):

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it *denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs*, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

450 U.S. at 717, 718 (emphasis added).

In *Thomas*, a Jehovah's Witness worked for a company that manufactured military hardware. Initially, his work did not directly involve the production of weapons. Because of a partial plant closure, however, Thomas was transferred to an assembly line directly manufacturing weapons. His religious beliefs forbade him from working directly on weapons production. Since the remaining facilities of the company all produced weapons, Thomas quit his job. Like Hobbie, the state denied Thomas unemployment benefits. The Supreme Court held that Thomas was entitled to unemployment benefits, as he had been put to a choice between his conscience and his job. His quitting, therefore, was for "good cause." *Id.* at 712, 713.

The *Thomas* case is so factually similar to the instant case that it must be deemed controlling precedent. The coercive element in *Thomas* was his being forced to choose between conscience and job. Having followed his religious beliefs, the state could not then withhold unemployment benefits. The same is true for Hobbie. She was put to a direct choice between continuing to work on her Sabbath, or being fired. Thus, the coercive element in this case is indistinguishable from *Thomas*.

Thomas, in turn, was controlled by *Sherbert* v. *Verner*, 374 U.S. 398 (1963). *Sherbert* involved a Seventh-day

Adventist, like Hobbie, who was fired because of her inability to work on Saturdays. Mrs. Sherbert was denied unemployment benefits as she was considered "unavailable" for work. In order to be eligible for unemployment benefits in South Carolina, a person was required to be "able to work . . . available for work . . . [and] to accept available suitable work when offered him by the employment office or the employer." *Id.* at 400, 401. Sherbert was unable to find work that did not require Sabbath labor. The state denied her unemployment benefits, saying that she was unavailable for work, since she refused to work on Saturdays.

The South Carolina Supreme Court, ruling against Sherbert, declared that such denial of benefits "places no restriction upon the appellant's freedom of religion nor does it in any way prevent her in the exercise of her right and freedom to observe her religious beliefs in accordance with the dictates of her conscience." 240 S.C. 286, 303-304, 125 S.E.2D 737, 746; *quoted in*, *Sherbert*, 374 U.S. at 401.

However, the United States Supreme Court rejected this reasoning. Citing *Braunfield* v. *Brown*, 366 U.S. 599 (1961), the Court insisted that "[i]f the purpose or effect of a law is to *impede the observance of one or all religions* or is to discriminate invidiously between religions, that law is *constitutionally invalid even though the burden may be characterized as being only indirect.*" *Id.* at 607 (emphasis added). In *Sherbert*, the state's action directly forced Sherbert "to choose between . . . following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand." *Id.* at 404.

The State of Florida's determination against Hobbie has an identical effect. By not providing her with unem-

ployment benefits to support her between jobs, the State put Hobbie under great economic pressure to accept any employment regardless of whether it required Saturday work. Hobbie, like Sherbert, has been directly coerced by the State into "abandoning one of the precepts of her religion in order to accept work." *Id.*

State coercion of religious conscience is offensive whenever it occurs. Yet the coercive force is most offensive when brought to bear on a person contemplating a change of religion, or upon the new convert. Such persons are especially vulnerable to the state's coercive influence because their faith is just blossoming and not yet deeply rooted. Writing about the importance to the state of protecting conscience, the remarks of Harlan Fiske Stone, later Chief Justice, are especially true where the conscientious faith is recently adopted.

> [B]oth morals and sound policy require that the state should not violate the conscience of the individual. All our history gives confirmation to the view that liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the state. So deep in its significance and vital, indeed, is it to the integrity of man's moral and spiritual nature that nothing short of the self-preservation of the state should warrant its violation; and it may well be questioned whether the state which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process.

Stone, *The Conscientious Objector*, 21 Col. Univ. Q. 253, 269 (1919).

Florida relies on a single factual distinction in arguing that *Sherbert* and *Thomas* should not control: Hobbie was the "agent of change." In both *Sherbert* and *Thomas*, it

was the employer who changed the conditions of employment. Florida argues that Hobbie's case must be distinguished because she was somehow at fault for converting to a new religion and thereby unable to satisfy the terms and conditions of her employment. This distinction must be rejected.

Where the free exercise of religion is involved, whether it was the employer or employee who caused the conflict is irrelevant to the issue of eligibility for unemployment benefits. *Sherbert* and *Thomas* stand for the proposition that public benefits simply cannot be conditioned on the inhibition or deterrence of the exercise of First Amendment freedoms. *See also, Speiser* v. *Randall*, 357 U.S. 513 (1958). The date of Hobbie's conversion bears no relation to the salient issue which is the degree of coercion involved. Florida insists that when an employee's religion conflicts with the terms of employment, resulting in discharge, eligibility for unemployment benefits should be conditional upon the employee's non-conversion. However, the Court has repeatedly declared:

> It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or *placing of conditions upon a benefit or privilege. American Communications Assn.* v. *Douds*, 339 U.S. 382, 390; *Wieman* v. *Updegraph*, 344 U.S. 183, 191-192; *Hannegan* v. *Esquire, Inc.* 327 U.S. 146, 155-156.

Sherbert, 374 U.S. at 404, 405 (emphasis added).

The very notion that religious belief can constitute "fault" or "misconduct" is repugnant to the Constitution. The choice of one's religious faith is a cherished American freedom and cannot be infringed by statutory interpretation. Furthermore, the stated purpose of Florida's unemployment compensation laws rejects such a construction.

In its "Declaration of public policy," the statute declares the reason for providing unemployment benefits: "[e]conomic insecurity due to unemployment is a serious menace to the health, *morals*, and welfare of the people of this state." Fla. Stat. Ann. § 443.021 (emphasis added). It is incongruous to interpret a statute designed to protect the morals of the people so as to be hostile to an individual's religious practice.

Finally, a major difficulty with the "agent of change" argument is that it is factually incorrect in this case. Hobbie had worked out an accommodation with her immediate supervisor, the manager of the Winter Park store, that was working well up to the time she was fired. The manager had informed his superiors that the arrangement was satisfactory (Tr. at 59). Although the employer's duty to accommodate is not an issue in this case,[2] the record clearly demonstrates that upper management rejected an existing accommodation and insisted that Hobbie either work her regularly scheduled Saturdays, or quit. When she refused, she was fired. Thus, "the agent of change" in this case was the employer, not Hobbie.

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[2] Appellee's Motion to Dismiss or Affirm asserts that the issue is whether an employee who converts can "force her employer to change the conditions of her employment to accommodate her new religious convictions." *Motion* at 17. This is clearly not an issue in this case. The employer's duty to accommodate the religious beliefs of employees is governed by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. 2000e et seq. This case does not allege employment discrimination under the federal statute. Although the facts of this case suggest that Hobbie likely would have prevailed in such an action, the employer's legal obligation to accommodate Hobbie is irrelevant to the issue of eligibility for unemployment benefits. Even if Lawton and Co. was legally entitled to dismiss Hobbie, she would still be entitled to receive unemployment compensation.

The only state courts that have considered the "agent of change" theory have rejected it. Of the cases cited by Florida in its Motion to Dismiss or Affirm, only two are on point. (Motion at 11, 12). Four cases involved situations where the employee had accepted the job knowing that there was a religious conflict. *Hildebrand* v. *Unemployment Ins. Appeals Bd.*, 140 Cal. Rptr. 151, 566 P.2d 1297 (1977); *cert denied*, 434 U.S. 1068 (1978); *Levold* v. *Employment Security Department*, 604 P.2d 175 (Wash.App.1979); *DePriest* v. *Puett*, 669 S.W.2d 669 (Tenn.App.1984); *DePriest* v. *Bible*, 653 S.W.2d 721 (Tenn.App.1980). These present a very different issue than the present case, since such conduct is concededly unfair to the employer. Hobbie did not accept employment knowing there was a religious conflict.

The first court to consider the "agent of change" theory was a Colorado Court of Appeals, in *Martinez* v. *Industrial Commission of Colorado*, 618 P.2d 738 (Colo.1980). In *Martinez*, decided before *Thomas*, the employee adopted religious beliefs after commencement of employment, resulting in a conflict with his job. The court denied unemployment benefits to Martinez. Three years later, however, the same court decided *Engraff* v. *Industrial Commission*, 678 P.2d 564 (Colo.App.1983) and in light of *Thomas*, effectively reversed its holding in *Martinez*. Engraff was employed by the Colorado Public Service Company in 1972. In 1980 he notified his employer that he had joined a religious organization that forbade him from engaging in certain conduct. Ultimately, he was fired because of this belief.

The Colorado court's analysis warrants careful consideration:

> While Colorado's Employment Security Act does not directly penalize Engraff for his

religious beliefs, the application of the Act in this instance had the effect of forcing him to choose between fidelity to those beliefs and the forfeiture of benefits on the one hand and abandonment of those beliefs to accept suitable work on the other. See *Sherbert* v. *Verner.* The Industrial Commission's imposition of this choice 'puts the same kind of burden upon the free exercise of religion as would a fine imposed against' Engraff for his wearing a turban or refusing to cut his facial hair in conformity with his religious beliefs, *Sherbert* . . . . Thus, here, though neutral on its face, the Act in its application, offended the constitutional requirement for governmental neutrality because it unduly burdened Engraff's free exercise of religion. *Wisconsin* v. *Yoder*, . . . *Sherbert*, and, *Thomas* v. *Review Bd.* . . . require that, should the State burden the free exercise of religion, it must do so in the least restrictive available way to achieve a compelling state interest.

Engraff v. *Industrial Commission*, 678 P.2d 564, 567 (Col.1983) (citations omitted). In overturning the *Martinez* decision, the court held that to focus on the fact that it was the employee who changed the terms of employment:

> places primary importance on the timing of Engraff's religious conversion and ignores the burden placed on the free exercise of his religious beliefs. Engraff should not be penalized because he did not embrace his faith at the "proper time." . . . In light of *Thomas* v. *Review Board*, . . . decided after *Martinez*, we consider the distinctions made in *Martinez* to be untenable and, thus, do not follow that case.

Engraff, 678 P.2d at 568 (citations omitted).

A Michigan Court of Appeals also rejected the "agent of change" theory as inconsistent with the guarantee of religious liberty.

> The only factual difference between this case and the Supreme Court precedents [*Sherbert* and *Thomas*] is that the claimant herein adopted her religious beliefs after gaining employment. *We do not accept the view that the first Amendment protects the right to adhere to religious beliefs, but not the right to adopt such beliefs in the first instance or convert from one faith to another* . . . The important factor, common to the three cases, is that "the employee was put to a choice between fidelity to religious belief or cessation of work." *Thomas.*

Key State Bank v. *Adams*, 360 N.W.2d 909, 913 (Mich.1984) (citation omitted) (emphasis added). Accordingly, the "agent of change" theory must be rejected and this case controlled by *Sherbert* and *Thomas.*

B. The Free Exercise Clause Protects Hobbie's Choice Of Religious Beliefs

In order to determine whether a state statute may constitutionally infringe the religious beliefs or practices of an individual, the Court has frequently applied a three part analysis. The claimant must first show that the challenged state action imposes a burden on the free exercise of religion. The state must then demonstrate that it has a compelling interest justifying the burden on religious freedom, and in addition, that there is no less restrictive means of achieving that interest. *United States* v. *Lee*, 455 U.S. 252 (1982); *Thomas*, 450 U.S. 707 (1981); *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); *Sherbert*, 374 U.S. 398 (1963). The Court summarized this test in *Yoder*: "[t]he essence of all that has been said and written on the subject

is that *only those interests of the highest order* and those not otherwise served can overbalance legitimate claims to the free exercise of religion." 406 U.S. at 215. (emphasis added).

The sincerity of Hobbie's Sabbath belief has not been questioned. The issue is whether coercion exists, and if so, whether the state can justify it. As the preceeding analysis has shown, the coercion in this case is identical to that in *Thomas* and *Sherbert*. Thus, there can be no doubt that the State's action infringes Hobbie's religious liberty.

The burden then shifts to Florida to show a compelling interest sufficient to override the burden on Hobbie's religion. The State has failed to demonstrate that its interest in denying benefits to Hobbie is any more compelling than the state's interest was in *Sherbert* and *Thomas*. In those cases, the Court has ruled that states do not have any compelling interest sufficient to justify denial of unemployment benefits to persons unemployed for religious reasons. *Thomas*, 450 U.S. 707; *Sherbert*, 374 U.S. 398. The record in this case is silent as to any costs that the State may have incurred, neither has Florida shown any other compelling interest. Without such evidence, Florida has no basis to assert an interest justifying infringement of Hobbie's religious liberty. In fact, any costs to Florida would be minimal. Assuming arguendo, that the State were to demonstrate that the number of claims filed based on religious reasons had increased, such marginal increases in the State's cost would not constitute an overriding interest so as to permit the denial of fundamental religious freedoms. Under Free Exercise clause doctrine, Florida simply has no defense.

The State will find no solace in the Court's recent decision in *Bowen* v. *Roy*, 54 U.S.L.W. 4603 (1986). *Bowen*

was a unique case which did not purport to overturn twenty-five years of Free Exercise decisions. It involved an American Indian family cut off from AFDC (Aid to Families with Dependent Children) and Food Stamp benefits because of their refusal, on religious grounds, to use their daughter's social security number as required by the government. The Court focused on the fact that the family was dictating to the government how to run its internal affairs. The Court specifically distinguished the case from other Free Exercise Clause cases involving the state's conditioning the receipt of benefits on the compromising of one's religion. In *Bowen*, Roy attempted to require the government to act in accordance with his religious beliefs. The Court ruled that Roy could no more dictate government procedures in administering its benefit programs than he could "the size or color of the government's filing cabinets." *Id.* at 4605.

That the holding in *Bowen* should not be generally applied to all cases involving important government functions is illustrated by comparison with *United States* v. *Lee*, 455 U.S. 252 (1982). In *Lee*, an Amish man objected to the payment of social security taxes. A statute provided an exemption from such taxes for Amish who were self-employed, but failed to include those who employed other Amish, as did Lee. The Court refused to extend the statute beyond its terms, or to find a required exemption from social security on religious freedom grounds. Although the *Lee* decision involved an integral government function akin to the Food Stamp or Unemployment compensation programs at issue in *Bowen* and *Hobbie*, the Court applied the traditional three part Free Exercise analysis. It stated: "(n)ot all burdens on religion are unconstitutional . . . The state may justify a limitation on religious liberty by showing that it is essential to accom-

plish an overriding governmental interest." 455 U.S. at 257, 258 (citations omitted).

Hobbie does not request that Florida change its internal operations to accommodate her religion. She asks only that her claim be administered in exactly the same manner as for other workers. Thus, *Bowen* does not control the present case. Rather, applying the three part analysis used in *Lee* and other Free Exercise cases, it is clear that Florida cannot justify its infringement of Hobbie's religious liberty. No overriding governmental interest has been shown in this case.

C. Payment Of Unemployment Insurance Benefits To Hobbie Does Not Violate The Establishment Clause

Florida cannot justify the denial of unemployment benefits to Hobbie by asserting a compelling state interest under the Free Exercise Clause of the First Amendment. Neither can it use an Establishment Clause challenge to overturn a long line of cases requiring the state to accommodate an individual's religious beliefs. The Court has explicitly rejected such a challenge in both *Thomas* and *Sherbert*.

> In holding as we do, plainly we are not fostering the 'establishment' of the Seventh-day Adventist religion in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall. *Sherbert* v. *Verner*, 374 U.S. at 409.

quoted in, *Thomas*, 450 U.S. at 720.

The state of Florida would not be establishing the Seventh-day Adventist religion by paying unemployment benefits to Hobbie in common with other persons unemployed.

In Establishment Clause cases, the Court has often applied a three part test enunciated in *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971). This test requires that all legislation, to pass muster under the Establishment Clause, must have a secular purpose, a secular effect, and must not excessively entangle church and state. Under this test, the interpretation of the Florida statute, excluding religious conversion from disqualification for unemployment benefits as "misconduct," is not an establishment of religion. Undeniably, the purpose of the statute is wholly secular: "to lighten [unemployment's] burden which now so often falls with crushing force upon the unemployed worker and his family." Fla.Stat.Ann. § 443.021. Neither is there any entanglement between church and state, since there is no contact between government and any religious organization. If there is a problem, it must be with the statute's alleged religious effect. The only effect of the statute is to pay Hobbie unemployment benefits when she was fined because of a conflict between her newly adopted religious beliefs and her job requirements. Certainly, the Court did not find this to be a problem in *Thomas* or *Sherbert*.

The recent case of *Witters* v. *Washington Department of Services for the Blind*, 106 S.Ct. 748 (1986), suggests a method of analysis when state financial support for religious individuals is involved. In *Witters*, like Hobbie, a neutral state statute was challenged on Establishment Clause grounds. This law provided educational assistance to blind students. Witters had been denied such aid because he was studying thelogy to become a minister at a church-related college. The Court declared:

> It is well-settled that the Establishment Clause is not violated every time money previously in the possession of a State is conveyed to a religious institution. For example, a State may issue a paycheck to one of its employees, who may then donate all or part of that paycheck to a religious institution, all without constitutional barrier; and the State may do so even knowing that the employee so intends to dispose of his salary.
>
> . . . Any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients.

106 S.Ct. at 751, 752.

The aid to Witters was acceptable because its purpose and effect was to assist blind people, not blind religious people or religious institutions. The fact that an individual pursuing a religious purpose was aided, even one who would use the money to train for a religious vocation, was irrelevant. In Hobbie's case, the unemployment benefits are paid to a person who is unemployed through no fault of her own, not because she is religious. The effect is not to aid religion, per se, but to fulfill the valid secular goal for which unemployment compensation was created: to alleviate the hardship of losing one's job. Certainly, the support of religion by payment of benefits to Hobbie is far less than that of financing Witters' ministerial education.

Justice Powell, concurring in *Witters*, clarified the aid issue even further. The Washington Supreme Court that rejected Witters' claim, said Powell, concluded that:

> the program had the practical effect of aiding religion *in this particular case*. *Witters* v. *State Commission for the Blind*, 102 Wash.2d 624, 628-629, 689 P.2d 53, 56 (1984). In effect, the court analyzed the case as if the Washington legislature had passed a private bill that awarded respondent free tuition to pursue religious studies.
>
> Such an analysis conflicts with both common sense and established precedent. Nowhere in *Mueller* did we analyze the effect of Minnesota's tax deduction on the parents who were parties to the case; rather, we looked to the nature and consequences of the program *viewed as a whole*. *Mueller*, . . . 463 U.S. at 397-400.

106 S.Ct. at 754 (emphasis added).

Even where the practical effect of a neutral statute is to aid religion in a particular case, that alone is not enough to invalidate the statute. The proper perspective is to view the statute "as a whole." An Establishment Clause challenge to the Florida statute is only possible if the legislation was passed to aid Hobbie individually. Viewed as a whole, the program clearly aids all kinds of people who are fired, whether religious or not, and whether the reason for their firing was based on religious grounds or not. As Justice Stevens observed in *United States* v. *Lee: Thomas* and *Sherbert* may "be viewed as a protection against unequal treatment rather than a grant of favored treatment for the members of the religious sect." *Id.*, at 265. To single out religious employees for exclusion from unemployment benefits when they are fired through no fault of their own would deny them the equal protection of the laws. A holding that religious conversion is not "misconduct" would not single out religious persons or, for that matter, religions, for special treatment. Such a construction would recognize that religious conversion is one of many valid events that would not otherwise disqualify employees from receiving unemployment compensation.

This Court used similar reasoning to validate the tax exemption of religious organizations in *Walz* v. *Tax Commission*, 397 U.S. 664 (1970). In *Walz*, churches were considered to be part of a class including many types of charitable organizations such as schools, hospitals, and libraries, all eligible for tax exemption. As the Court observed:

> these organizations are exempted because they, among a range of other private, nonprofit organizations contribute to the well-being of the community in a variety of nonreligious ways, and thereby bear burdens that would otherwise either have to be met by general taxation, or be left undone, to the detriment of the community.

Walz, 397 U.S. at 687. Religious bodies were not singled out for special, favored treatment. Rather, they were treated equally with those in the same class. The Court upheld the tax exemption of churches in the face of Establishment Clause arguments that exemption provided both symbolic and financial support to churches. It cannot seriously be contended that the payment of unemployment benefits to Hobbie would aid religion nearly as much as tax exemption aids churches. If churches can be treated equally with other types of charities, so too must Hobbie be treated equally with others eligible for unemployment benefits.

Although the Court has occasionally suggested that the two religion clauses are in conflict, *E.g.*, *Walz*, 397 U.S. 664, it has repeatedly recognized the existence of a "general harmony of purpose between the two religion clauses of the First Amendment." *Gillette* v. *United States*, 401 U.S. 437, 461 (1971). "The ultimate First Amendment

objective," Justice Goldberg declared, is "religious liberty." *Abington School District* v. *Schempp*, 374 U.S. 203, 306 (1963) (Goldberg, J. concurring). "The Framers did not entrust the liberty of religious beliefs to either clause alone." *Schempp*, 374 U.S. at 256 (Brennan, J. concurring). Thus, the Establishment Clause is a "coguarantor, with the Free Exercise Clause, of religious liberty." *Id.* More recently, the Court declared that "under the Religion Clauses, Government must guard against activity that impinges on religious freedom." *Thornton* v. *Caldor, Inc.*, 105 S.Ct. 2914, 2917 (1985). Thus, "although a distinct jurisprudence has enveloped each of these clauses, *their common purpose is to secure religious liberty.* See *Engel* v. *Vitale*, 370 U.S. 421, 430 (1962)" *cited in*, *Wallace* v. *Jaffree*, 104 S.Ct. 2479, 2496 (1985) (O'Connor, J. concurring) (emphasis added).

Because the two religion clauses are essentially in harmony they should not readily be interpreted to conflict. The Court should consider the underlying purpose of both clauses, which is to protect and promote religious liberty. This the Court has consistently done by recognizing the constitutional validity of statutory exemptions or accommodations. *E.g. Welsh* v. *United States*, 398 U.S. 333 (1970); *Selective Draft Law Cases*, 245 U.S. 366 (1918) (conscientious objection); *United States* v. *Lee*, 455 U.S. 252 (1982) (approving exemption from social security tax for self-employed but not for employees); *Bowen* v. *Roy*, 54 U.S.L.W. 4603 (1986) (approving statutory protection for American Indian religious freedom); *Walz*, 397 U.S. 664 (1970) (tax exemption of churches). The principle of religious freedom has similarly guided the Court to judicially create exemptions to resolve Free Exercise conflicts with facially neutral statutes. *E.g. Wisconsin* v. *Yoder*, 406 U.S. 205 (1972) (exempting Amish children

from compulsory attendance at high school); *West Virginia Board of Education* v. *Barnette*, 329 U.S. 624 (1943) (exempting a Jehovah's Witness child from compulsory flag salute in public school).

The unifying principle of religious freedom, properly applied, does not discover an Establishment Clause challenge to every case involving the free exercise of religion. Rather, the purpose is to protect the practice of religion while upholding the separation of church and state. As this case presents no problem of government involvement with the church or with religion in any manner, the Establishment Clause challenge is frivolous. In the face of such an obvious infringement of Hobbie's right to choose her religious belief, any conceivable Establishment Clause concerns become inconsequential.

D. The Choice Of Religious Belief Is A Fundamental Liberty Protected By The Constitution And Cannot Be Considered Misconduct

The three part Establishment Clause analysis provides no rational basis to deny unemployment benefits to Hobbie. Properly understood, the Establishment Clause requires the State to provide Hobbie the same benefits it offers to others. The right to adopt a religious belief is fundamental to the American scheme of ordered liberty, as this Court has consistently proclaimed in a long line of cases, and cannot be infringed by statutory construction.

> *"Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law."* *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940) (emphasis added).

"Fundamental to the conception of religious liberty protected by the Religion Clauses is the idea that religious beliefs are a matter of voluntary choice by individuals and their associations. . . ." *McDaniel* v. *Paty*, 435 U.S. 618, 640 (1978). And:

> The individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority . . . the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces *the right to select any religious faith* or none at all.

Wallace v. *Jaffree*, 105 S.Ct. 2479, 2488 (1985) (emphasis added).

These statements declare that religious conversion is protected by both clauses of the First Amendment. Justice Black specifically identified the Establishment Clause as offering such protection in his classic statement in *Everson* v. *Board of Education*, 330 U.S. 1 (1947).

> The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church . . . Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be *punished for entertaining or professing religious beliefs or disbeliefs*.

330 U.S. at 15, 16 (emphasis added). Justice Black further stated:

> [N]o State may 'exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, *because of their faith, or lack of it* from receiving the benefits of public welfare legislation.' *Everson* v. *Board of Education*, 330 U.S. 1, 16.

quoted in, *Sherbert* v. *Verner*, 374 U.S. at 410 (emphasis in original).

In the instant case, Florida would deny Hobbie unemployment benefits because her change of faith occurred at the wrong time. Such a denial would penalize her for conversion, since there is no contention that Hobbie would not otherwise be eligible for benefits had she been a Seventh-day Adventist when hired. *Thomas*, 450 U.S. 707. To single out the practice of conversion for disfavored treatment when other religious beliefs and practices are protected is to discriminate against persons who convert and religions that proselytize. Such discrimination not only violates the Establishment Clause, but constitutes a denial of equal protection as well, in violation of the Fourteenth Amendment.

Justice Douglas, writing to uphold the constitutionality of a program of releasing children from public schools to receive religious education, declared:

> We are a religious people whose institutions presuppose a Supreme Being. *We guarantee the freedom to worship as one chooses.* We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. *We sponsor an attitude on the part of government* that shows no partiality to any one group and *that lets each flourish according to the zeal of its adherents and the appeal of its dogma.* When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and *accommodates the public service to their spiritual needs.* To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe . . . (W)e find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.

Zorach v. *Clauson*, 343 U.S. 306, 313-314 (1952) (emphasis added).

A finding that religious conversion badly timed constitutes misconduct utterly fails to accommodate the "public service" to the spiritual needs of those, like Hobbie, who choose a religious faith after commencing employment. It certainly does not evidence "an attitude on the part of government . . . that lets [religion] flourish." *Id.* Indeed, denial of benefits solely on the basis of religious conversion demonstrates government disapproval of conversion. Such disapproval violates the Establishment Clause as Justice O'Connor recently emphasized:

> The purpose prong of the *Lemon* test asks whether government's actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. An affirmative answer to either question should render the challenged practice invalid.

Lynch v. *Donnelly*, 104 S.Ct. 1355, 1368 (1984) (O'Connor, J. concurring).

Both Religion Clauses would find abhorrent the State's coercion of Hobbie's religious conscience. Both find Florida's construction of the unemployment insurance statutes repugnant to the religious liberty guaranteed in these clauses. As in the case of a school child forced to

salute the flag against his religious conscience, so in Hobbie's situation do Justice Murphy's words ring true:

> (T)here is before us the right of freedom to believe, freedom to worship one's Maker according to the dictates of one's conscience, a right which the Constitution specifically shelters. Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches.

West Virginia State Board of Education v. *Barnette*, 319 U.S. 624, 646 (1942).

CONCLUSION

The right to convert to the religion of one's own choice has long been considered a cherished First Amendment freedom. To infringe this freedom without good reason, and absent a compelling state interest would deal a crippling blow to religious freedom. State coercion of conscience is always offensive, but especially so when exercised against an individual at the most vulnerable point in her religious experience—in the valley of decision. This case is about the right of a person to be free from state induced coercion concerning the choice of religion. *Sherbert*, *Thomas*, and a long line of First Amendment cases declare that the State cannot deny a benefit on condition that a person violate her religious belief. Accordingly, Appellant Hobbie respectfully requests that this Court overrule the decision of the Florida District Court of Appeals.

Respectfully submitted,

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